

## 1. DEFINITIONS & INTERPRETATION:

- 1.1 “Conditions” means these terms and conditions relating to the supply of the Services;
- 1.2 “Contract” means the contract formed by the acceptance of the Quotation and incorporating these Conditions;
- 1.3 “Customer” means the person to whom the Quotation is addressed and to whom the Services are to be provided;
- 1.4 “Data” means any data in whatever form, the provision of which comprises the Services (wholly or in part), including, without limitation, any personal data;
- 1.5 “Data Protection Legislation” means up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
- 1.6 “Fees” means the fees payable by the Customer to the Supplier for the Services as set out in the Quotation (as varied pursuant to clause 5.3);
- 1.7 “GDPR” means General Data Protection Regulation ((EU) 2016/679).
- 1.8 “Intellectual Property Rights” means all intellectual property rights of whatever nature including, without limitation, copyrights, trade and service marks (including, without limitation, the trade names, rights in logos and get-up), confidential information, trade secrets and know-how, moral rights, database rights, registered designs, design rights, all rights of whatsoever nature in data, all rights of privacy and all intangible rights and privileges of a nature similar or allied to any of the foregoing, in every case in any part of the world and whether or not registered;
- 1.9 “Materials” means any brochures, newsletters, flyers, magazines, catalogues, postcards or other documentation, merchandise or items provided by the Customer (or by a third party on the Customer’s behalf) to the Supplier in respect of the Services;
- 1.10 “NDA” means the non-disclosure agreement between the Customer and the Supplier;
- 1.11 “Quotation” means the quotation for services provided by the Supplier and accepted by the Customer which incorporates these Conditions;
- 1.12 “Services” means the services to be provided by the Supplier to the Customer, as set out in the Quotation; 1.12 “Supplier” means Johnston Mailing Limited, a company incorporated in Scotland (company number SC218543) and having its registered office at 44 Watt Road, Hillington Park, Glasgow G52 4RY;
- 1.13 References to any statute, or any statutory provision, including any regulation, statutory instrument, or other subordinate legislation derived from such statutory sources, shall include references to any statute or other statutory provision which amends, extends, consolidates or replaces the original statutory reference or which subsequently affects such revised statutory reference;
- 1.14 References to “personal data” and “processing” shall have the meanings given to them in the Data Protection Act 1998;
- 1.15 References to the “parties” means the Supplier and the Customer, and “party” shall be construed accordingly;
- 1.16 Any reference to a clause shall be a reference to a clause of these Conditions (unless otherwise stated).

## 2. GENERAL:

- 2.1 These Conditions shall prevail over any inconsistent terms and conditions contained in or referred to in the Customer’s standard terms and conditions or implied by law, trade custom, practice or course of dealing;
- 2.2 Where any additional services are requested by the Customer (which are not included in the Services) (the “Additional Services”) then the Additional Services shall be agreed in writing or email by the parties and will be charged at the Supplier’s market rates (as varied from time to time) unless otherwise agreed in writing or by email. These Conditions shall apply *mutatis mutandis* to the Additional Services.

## 3. CUSTOMER’S OBLIGATIONS:

- 3.1 The Customer shall:
  - 3.1.1 co-operate with the Supplier in all matters relating to the Services;
  - 3.1.2 be responsible for ensuring that the Materials (a) comply in all respects with applicable statutory requirements and codes of practice of the appropriate supervisory bodies including, without limitation, the British Codes of Advertising and Sales Promotion and the Direct Marketing Association’s Code of Practice, (b) conform to specifications given by the Supplier to the Customer and Royal Mail requirements, (c) are supplied punctually and in sufficient time for the Supplier to timeously fulfil the Services, (d) are accompanied by a delivery advice notice stating the quantity and description of the Materials supplied, (e) are delivered on pallets, boxed, packed and/or supplied in such a way as to withstand normal storage and handling; and (f) are sufficient to enable the Supplier to deliver the contract quantity of any printing or reproductive work ordered (allowing for spoilage of 5% of the Materials supplied (unless otherwise stated in the Quotation));
  - 3.1.3 be responsible for ensuring that any Data (a) is supplied punctually and in sufficient time for the Supplier to timeously fulfil the Services, (b) is not corrupted or contain computer viruses, (c) will be readable by the Supplier; and
  - 3.1.4 provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access the Data and such other information as required to perform the Services.
- 3.2 The Customer warrants that none of the Materials, Data or information provided contains defamatory, obscene, indecent or inappropriate content.
- 3.3 The time of delivery of the Materials, information, Data and any consents pursuant to this clause 3 shall be of the essence.
- 3.4 Unless otherwise stated in the Quotation, all Materials are at the Customer’s risk whilst at the Supplier’s premises or in transit to such premises and the Customer is responsible for arranging for adequate insurance cover for the Materials.

3.5 The Customer represents, warrants and undertakes that it has the full authority (and has obtained all third party permissions and waivers required) to enter into this Contract and to fulfil its obligations under this Contract.

**4. SUPPLIER'S OBLIGATIONS:**

4.1 The Supplier shall perform the Services using reasonable skill and care.

4.2 The Supplier reserves the right to make any changes to the Services (or any part thereof) which are (a) required to conform to any applicable statutory or legislative requirements, or (b) deemed necessary by the Supplier and which do not in the Supplier's opinion materially affect the nature, scope of, or charges for the Services.

4.3 Unless otherwise stated in the Quotation, the Supplier shall endeavour to meet any performance dates but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Contract.

4.4 The Supplier shall have no rights in any Data other than the right to use it to provide the Services.

**5. FEES AND PAYMENT:**

5.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the Fees.

5.2 All Fees payable by the Customer under this Contract shall be paid:

5.2.1 in Pounds Sterling and, where applicable, VAT shall be added and paid by the Customer;

5.2.2 by the Customer in full and in cleared funds, within 14 days of the date of the Supplier's invoice in respect of postage and 30 days of such invoice date in all other instances (unless otherwise stated in the Quotation or such invoice);

5.2.3 by direct bank transfer or cheque to the Supplier's bank account as set out in the relevant invoice; and

5.2.4 in full by the Customer without set-off, counterclaim, deduction or withholding (other than deduction or withholding of tax required by law).

5.3 In the event that there is an increase in postage charges by the Royal Mail (or other third party supplier), the Supplier may increase the Fees accordingly.

5.4 Without prejudice to any other right or remedy that it may have under this Contract or in law, if the Customer fails to pay the Supplier on the due date:

5.4.1 the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time accruing on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

5.4.2 the Supplier may suspend all Services until payment of all outstanding amounts have been made in full.

**6. INTELLECTUAL PROPERTY RIGHTS:**

6.1 In order for the Supplier and its sub-contractors to perform the Services, the Customer hereby agrees (a) to grant a non-exclusive, royalty free licence to the Supplier to use such of its Intellectual Property Rights (and that of its clients), and (b) that the Supplier may grant sub-licences to third parties in respect of such Intellectual Property Rights.

6.2 The Supplier acknowledges that the Intellectual Rights in the Data are and will remain the property of the Customer or its licensors (as the case maybe).

6.3 Other than the rights referred to in clauses 6.1 and 6.2, the Intellectual Property Rights in any work created by or

for the Supplier in relation to the Services shall vest in the Supplier (unless otherwise agreed in writing).

6.4 The Customer warrants that that the processing of the Data under this Contract will not infringe the Intellectual Property Rights of any third party.

**7. CONFIDENTIALITY:** The terms of the NDA shall continue in full force and effect following the entering into of this Contract and "Confidential Information" in the NDA shall be deemed to include the content of this Contract and the Data. In the event that there is conflict between these Conditions and the NDA, this Contract shall prevail.

**8. DATA PROTECTION AND DATA PROCESSING:**

8.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

8.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

8.3 Without prejudice to the generality of clause 8.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to the Supplier for the duration and purposes of the Contract.

8.4 Without prejudice to the generality of clause 8.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(c) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Data Processing Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Customer;

(d) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage

and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (e) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (f) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
  - the Data Subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (g) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (h) notify the Customer without undue delay on becoming aware of a Personal Data breach; and
- (i) at the written direction of the Customer (and in any event within 10 working days of the end of the Contract), delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Data Processing Law to store the Personal Data.

8.5 The Customer consents to the Supplier appointing a third-party processor of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 8. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

8.6 Either party may, at any time on not less than 30 days' notice, revise this clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## 9. LIABILITY

- 9.1 Nothing in this Contract limits or excludes the Supplier's liability for (a) death or personal injury caused by its negligence, (b) fraud or fraudulent misrepresentation, or (c) any other liability which cannot be limited or excluded by law.
- 9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, delict (including, without limitation, negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for (a) loss of profits, (b) loss of sales or business, (c) loss of agreements or contracts, (d) loss of anticipated savings, (e) loss of or damage to goodwill, (f) loss of use or corruption of software, data or information, or (g) any indirect or consequential loss.
- 9.3 If the Supplier's performance of its obligations under this Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.
- 9.4 The Customer shall be liable to pay to and indemnify the Supplier on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this Contract.
- 9.5 Subject to the foregoing terms of this clause 9, the Supplier's total liability to the Customer, whether in contract, delict (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited to, in respect of all claims (connected or unconnected) in any consecutive 12 (twelve) month period, the equivalent of the total Fees actually paid by the Customer to the Supplier in that period.

## 10. TERMINATION

- 10.1 Except as otherwise provided for in this Contract, either party may terminate the Contract in respect of all or part of the Services by giving one month's notice in writing.
- 10.2 Either party shall be entitled to terminate this Contract immediately by written notice to the other if (a) the other party is in material breach of the provisions of this Contract which breach is either incapable of being remedied or (if capable of remedy) is not remedied

within fourteen (14) days of written notice having been given to remedy such breach, or (b) the other party enters into liquidation (otherwise than for the purposes of reconstruction or amalgamation without insolvency) or compounds with its creditors or has an administrator or a receiver appointed over all or any part of its assets or becomes insolvent or takes or suffers any similar action in consequence of debt or ceases to trade.

## 11. CONSEQUENCES ON TERMINATION

### 11.1 On termination or expiry of this Contract:

- 11.1.1 the Customer shall immediately pay to the Supplier (a) all of the outstanding unpaid invoices and interest in respect of the Services, and (b) in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- 11.1.2 the Supplier shall be entitled to destroy or dispose of the Materials at the Customer's cost;
- 11.1.3 subject to clause 11.1.2, if the Customer wishes any Materials to be returned to it on termination then it shall notify the Supplier immediately on termination and arrange (at its own cost and risk) for collection within 7 days of termination;
- 11.1.4 the Supplier shall return any Data received to the Customer as soon as reasonably practicable and/or arrange for the Data to be deleted from its IT systems (as directed by the Customer); and
- 11.1.5 the following clauses shall continue in force: clause 6 (Intellectual property rights), clause 7 (Confidentiality), clause 9 (Liability), clause 11, clause 13 (Notices) and clause 14.11 (Governing law & jurisdiction).

11.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach which existed at or before the date of termination or expiry.

12. **FORCE MAJEURE:** Provided it has notified the other party in writing or by email, if a party is prevented, hindered or delayed in or from performing any of its obligations (other than payment obligations) under this Contract by any event outside its reasonable control (**Affected Party**), the Affected Party shall not be in breach of this Contract or otherwise be liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

## 13. NOTICES

13.1 Notices to be given under this Contract must be in writing and sent to the address of the recipient set out in the Contract, or any other address which the recipient may tell the other party in writing.

13.2 Notices may be delivered by hand personally or sent by first class prepaid letter or by fax or by electronic mail and will be treated as served: if by hand, when delivered; if by first class post, 48 hours after posting; if by fax, when despatched, provided the sender's fax machine produces automatic confirmation of error free transmission to the recipient's fax number and if by electronic mail, when it is first stored in the other party's mailbox, evidenced by the sender's proof of sending to the correct email address.

13.3 This clause 13 does not apply to the service of any proceedings or other documents in any legal action.

## 14. GENERAL

14.1 **Variation:** Subject to clause 4.2, no variation of this Contract shall be effective unless it is in writing and signed by the parties.

14.2 **Waiver:** No failure or delay by a party to exercise any right or remedy shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

14.3 **Rights and remedies:** The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

14.4 **Severance:** If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

14.5 **Further Assurance:** At its own expense, the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may be required to give full effect to this Contract.

14.6 **Entire Agreement:** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract. Nothing in this clause shall limit or exclude any liability for fraud.

14.7 **Assignment:** This Contract is personal to the Customer and it shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract. The Supplier may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights.

14.8 **No Partnership or Agency:** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

14.9 **Third Party Rights:** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

14.10 **Dispute Resolution Procedure:** In the event a dispute arises the parties will attempt to resolve the dispute in good faith within 30 days.

14.11 **Governing law & Jurisdiction:** This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Scots law. Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).